

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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AMERICAN OVERSIGHT,  
1030 15th Street NW, B255  
Washington, DC 20005

*Plaintiff,*

v.

U.S. DEPARTMENT OF JUSTICE,  
950 Pennsylvania Avenue NW  
Washington, DC 20530

*Defendant.*

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Case No. 19-cv-3540

**COMPLAINT**

1. Plaintiff American Oversight brings this action against the U.S. Department of Justice under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency from

continuing to withhold agency records and ordering the production of agency records improperly withheld.

### **PARTIES**

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant U.S. Department of Justice (DOJ) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). The Office of Information Policy (OIP) is a component of DOJ and processes FOIA requests on behalf of itself and several other DOJ components including the Office of the Attorney General (OAG), the Office of the Deputy Attorney General (ODAG), and the Office of Legislative Affairs (OLA). The Executive Office for the United States Attorneys (EOUSA), the Criminal Division (CRIM), and the National Security Division (NSD) are also components of DOJ. DOJ has possession, custody, and control of the records that American Oversight seeks.

### **STATEMENT OF FACTS**

7. On September 25, 2019, the White House released a call memorandum memorializing President Trump's July 25, 2019 call with the president of Ukraine. On that call,

President Trump stated that he would ask his personal attorney, Rudy Giuliani, and the Attorney General to contact the Ukrainian government regarding investigations of his political opponent, former Vice President Joe Biden, and his son. *See* The White House, Memorandum of Telephone Conversation with President Zelenskyy of Ukraine, July 25, 2019, <https://www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf>.

*OAG Communications FOIA*

8. On September 25, 2019, American Oversight submitted a FOIA request to DOJ seeking the following on an expedited basis:

1. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) the DOJ officials specified below and (2) Rudolph Giuliani, Sam Kislin, Victoria Toensing, or Joseph diGenova.
2. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) the DOJ officials specified below and (2) any representative of the government of Ukraine, including, but not limited to, Ukrainian President Zelensky.
3. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of the DOJ officials specified below, regarding (1)

any plan by Rudolph Giuliani, Sam Kislin, Victoria Toensing, and/or Joseph diGenova to travel to Ukraine or to communicate with Ukrainian government officials or future Ukrainian government officials and/or (2) any other effort to encourage the Ukrainian government to investigate any matter related to former Vice President Joseph Biden or his son Hunter Biden, and/or (3) the August 12, 2019 Intelligence Community whistleblower complaint that may relate to the president or the administration's actions with respect to Ukraine and/or the Biden family.[FN Omitted]

Specified officials:

- i. Attorney General William Barr
- ii. Chief of Staff and Senior Counselor to the Attorney General Brian Rabbitt
- iii. Anyone else serving as Counselor to Attorney General Barr
- iv. Anyone serving as a Chief of Staff, Scheduler, or Assistant to Attorney General Barr
- v. Anyone serving as White House Liaison in the Office of the Attorney General

Please provide all responsive records from January 1, 2019, through the date the search is conducted.

9. OIP assigned this request tracking number DOJ-2019-007124.
10. By letter dated October 2, 2019, OIP informed American Oversight that it had granted American Oversight's request for expedited processing.
11. On October 24, 2019, OIP sent American Oversight a letter noting that it was administratively consolidating this request with the other OIP requests in this complaint. The letter indicated the requests would all be processed by OIP under tracking number DOJ-2019-007102.
12. American Oversight has not received any further communications from DOJ regarding this request.

*First Sent Key Terms FOIA*

13. On September 24, 2019, American Oversight submitted a FOIA request to DOJ seeking the following on an expedited basis:

All email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) sent by the officials specified below containing any of the following key terms:[FN omitted]

- i. Rudy
- ii. Rudolph
- iii. Giuliani
- iv. Giuiliani
- v. Guliani
- vi. Toensing
- vii. diGenova
- viii. Hunter
- ix. Biden
- x. Parnas
- xi. Fruman
- xii. Kolomoisky
- xiii. Klitschko
- xiv. Burisma
- xv. Shokin
- xvi. Lutsenko
- xvii. Zelensky
- xviii. Zelenskyy
- xix. Zelenskiy
- xx. Yermak
- xxi. "Ukraine Security Assistance Initiative"
- xxii. USAI

Specified officials:

- i. Attorney General William Barr
- ii. Chief of Staff and Senior Counselor to the Attorney General Brian Rabbitt
- iii. Deputy Attorney General Jeffrey Rosen
- iv. Former Deputy Attorney General Rod Rosenstein
- v. Assistant Attorney General for Legislative Affairs Stephen Boyd
- vi. Acting Deputy Assistant Attorney General and Chief of Staff for Legislative Affairs Mary Blanche Hankey

- vii. Anyone serving in the capacity of White House Liaison or White House Advisor
- viii. Assistant Attorney General for the Office of Legal Counsel Stephen Engel
- ix. Anyone serving in the capacity of Chief of Staff for the Office of Legal Counsel

American Oversight has limited its request to sent messages of each official to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if a specified official sent a response to an incoming message containing a key term listed above, the email chain containing the initially received message and the response is responsive to this request.

Please provide all responsive records from February 1, 2019, through the date the search is conducted.

- 14. OIP assigned this request tracking number DOJ-2019-007102.
- 15. OLC assigned this request tracking number FY19-211.
- 16. By letter dated September 27, 2019, OLC informed American Oversight that it had granted American Oversight's request for expedited processing.
- 17. By letter dated October 2, 2019, OIP informed American Oversight that it had granted American Oversight's request for expedited processing.
- 18. On October 24, 2019, OIP sent American Oversight a letter noting that it was administratively consolidating this request with the other OIP requests in this complaint. The letter indicated the requests would all be processed by OIP under tracking number DOJ-2019-007102.
- 19. American Oversight has not received any further communications from DOJ regarding this request.

*Multiple Component Communications FOIA*

20. On October 4, 2019, American Oversight submitted a FOIA request to DOJ seeking the following on an expedited basis:

1. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) the DOJ officials specified below and (2) Rudolph Giuliani, Sam Kislin, Victoria Toensing, or Joseph diGenova.
2. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) the DOJ officials specified below and (2) any representative of the government of Ukraine, including, but not limited to, Ukrainian President Zelensky.
3. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of the DOJ officials specified below, regarding (1) any plan by Rudolph Giuliani, Sam Kislin, Victoria Toensing, and/or Joseph diGenova to travel to Ukraine or to communicate with Ukrainian government officials or future Ukrainian government officials and/or (2) any other effort to encourage the Ukrainian government to investigate any matter related to former Vice President Joseph Biden or his son Hunter Biden, and/or (3) any issues regarding the August 12, 2019 Intelligence Community whistleblower complaint that involves [] the president and the administration's actions with respect to Ukraine and/or the Biden family, including records regarding the initial processing of the

whistleblower's concerns, which was reportedly first communicated via the General Counsel of the Central Intelligence Agency.[FN Omitted]

Specified officials:

- i. Deputy Attorney General Jeffrey Rosen, and anyone serving as his Chief of Staff
- ii. Former Deputy Attorney General Rosenstein
- iii. Associate Deputy Attorney General Tashina Gauhar
- iv. Principal Associate Deputy Attorney General Ed O'Callaghan
- v. Assistant Attorney General Brian Benczkowski, and anyone serving as his Chief of Staff or Principal Deputy Assistant Attorney General
- vi. Assistant Attorney General John Demers, and anyone serving as his Chief of Staff or Principal Deputy Assistant Attorney General
- vii. U.S. Attorney for the District of Connecticut John Durham, and anyone serving as his Chief of Staff or first assistant

Please provide all responsive records from January 1, 2019, through the date the search is conducted.

This request is attached as Exhibit A.

21. OIP assigned this request tracking number DOJ-2020-00065.
22. EOUSA assigned this request tracking number EOUSA-2020-000016.
23. CRIM assigned this request tracking number CRM-300800736.
24. On information and belief, NSD has not sent any communications to American Oversight regarding this request.
25. By FOIA Online system notification dated October 7, 2019, EOUSA indicated that it had denied American Oversight's request for expedited processing.
26. By letter dated October 8, 2019, CRIM informed American Oversight that it had granted American Oversight's request for expedited processing.



27. By letter dated October 11, 2019, OIP informed American Oversight that it had granted American Oversight's request for expedited processing.

28. On October 24, 2019, OIP sent American Oversight a letter noting that it was administratively consolidating this request with the other OIP requests in this complaint. The letter indicated the requests would all be processed by OIP under tracking number DOJ-2019-007102.

29. American Oversight has not received any further communications from DOJ regarding this request.

*Second Sent Key Terms FOIA*

30. On October 4, 2019, American Oversight submitted a FOIA request to DOJ seeking the following on an expedited basis:

All email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) sent by specified DOJ officials containing any of the following key terms:[FN Omitted]

- i. Rudy
- ii. Rudolph
- iii. Giuliani
- iv. Giuiliani
- v. Guliani
- vi. Guiliani
- vii. Toensing
- viii. diGenova
- ix. Kislin
- x. Hunter
- xi. Biden
- xii. Parnas
- xiii. Fruman
- xiv. Kolomoisky
- xv. Klitschko
- xvi. Burisma
- xvii. Shokin
- xviii. Lutsenko
- xix. Zelensky

- xx. Zelenskyy
- xxi. Zelenskiy
- xxii. Yermak
- xxiii. Bakanov
- xxiv. “Ukraine Security Assistance Initiative”
- xxv. USAI

Specified officials:

- i. Principal Associate Deputy Attorney General Ed O’Callaghan
- ii. Associate Deputy Attorney General Tashina Gauhar
- iii. Assistant Attorney General Brian Benczkowski, and anyone serving as his Chief of Staff or Principal Deputy Assistant Attorney General
- iv. Assistant Attorney General John Demers, and anyone serving as his Chief of Staff or Principal Deputy Assistant Attorney General
- v. U.S. Attorney for the District of Connecticut John Durham, and anyone serving as his Chief of Staff or first assistant

American Oversight has limited its request to sent messages of each official to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if the specified officials sent a response to an incoming message containing a key term listed above, the email chain containing the initially received message and the response is responsive to this request.

Please provide all responsive records from January 1, 2019, through the date the search is conducted.

This request is attached as Exhibit B.

- 31. OIP assigned this request tracking number DOJ-2020-00066.
- 32. EOUSA assigned this request tracking number EOUSA-2020-000017.
- 33. CRIM assigned this request tracking number CRM-300800745.
- 34. NSD assigned this request tracking number 20-012.
- 35. By FOIA Online system notification dated October 7, 2019, EOUSA indicated that it had denied American Oversight’s request for expedited processing.

36. By letter dated October 10, 2019, CRIM informed American Oversight that it had granted American Oversight's request for expedited processing.

37. By letter dated October 11, 2019, OIP informed American Oversight that it had granted American Oversight's request for expedited processing.

38. By letter dated October 21, 2019, NSD informed American Oversight that it had granted American Oversight's request for expedited processing.

39. On October 24, 2019, OIP sent American Oversight a letter noting that it was administratively consolidating this request with the other OIP requests in this complaint. The letter indicated the requests would all be processed by OIP under tracking number DOJ-2019-007102.

40. American Oversight has not received any further communications from DOJ regarding this request.

*Exhaustion of Administrative Remedies*

41. As of the date of this complaint, DOJ has failed to (a) notify American Oversight of any determination regarding its FOIA requests, including the scope of any responsive records DOJ intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

42. Through DOJ's failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

43. Through EOUSA's denial of American Oversight's requests for expedited processing, American Oversight has exhausted its administrative remedies and seeks immediate judicial review of that issue.

44. Through NSD's failure to make a determination as to American Oversight's request for expedited processing, notwithstanding the obligation of agencies under FOIA to respond within ten days to a request for expedited processing, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review of that issue.

**COUNT I**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Failure to Grant Expedited Processing**

45. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

46. American Oversight properly requested records within the possession, custody, and control of EOUSA and NSD on an expedited basis.

47. EOUSA and NSD are components of DOJ, which is an agency subject to FOIA and must process FOIA requests on an expedited basis pursuant to the requirements of FOIA and agency regulations.

48. The records American Oversight has requested are urgently needed to inform the public about government activities of extraordinary public importance, and American Oversight is primarily engaged in disseminating information to the general public. Therefore, American Oversight's requests justify expedited processing under FOIA and agency regulations.

49. American Oversight is therefore entitled to declaratory and injunctive relief requiring EOUSA and NSD to grant expedited processing of American Oversight's FOIA requests.

**COUNT II**

**Violation of FOIA, 5 U.S.C. § 552**

**Failure to Conduct Adequate Searches for Responsive Records**

50. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

51. American Oversight properly requested records within the possession, custody, and control of DOJ.

52. DOJ is an agency subject to FOIA, and it must therefore make reasonable efforts to search for requested records.

53. DOJ has failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA requests.

54. DOJ's failure to conduct an adequate search for responsive records violates FOIA and DOJ regulations.

55. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

**COUNT III**

**Violation of FOIA, 5 U.S.C. § 552**

**Wrongful Withholding of Non-Exempt Responsive Records**

56. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

57. American Oversight properly requested records within the possession, custody, and control of DOJ.

58. DOJ is an agency subject to FOIA, and it must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

59. DOJ is wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to its FOIA requests.

60. DOJ is wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

61. DOJ's failure to provide all non-exempt responsive records violates FOIA and DOJ regulations.

62. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

### **REQUESTED RELIEF**

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant's components EOUSA and NSD to process American Oversight's requests on an expedited basis;
- (2) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;

- (3) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (4) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (5) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (6) Grant American Oversight such other relief as the Court deems just and proper.

Dated: November 25, 2019

Respectfully submitted,

/s/ Daniel A. McGrath

Daniel A. McGrath

D.C. Bar No. 1531723

/s/ Sara Kaiser Creighton

Sara Kaiser Creighton

D.C. Bar No. 1002367

AMERICAN OVERSIGHT

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*Counsel for Plaintiff*

# EXHIBIT A





October 4, 2019

**VIA EMAIL & ONLINE PORTAL**

Douglas Hibbard  
Chief, Initial Request Staff  
Office of Information Policy  
U.S. Department of Justice  
441 G St NW, 6th Floor  
Washington, DC 20530  
Via FOIAOnline

Amanda Marchand Jones, Chief  
FOIA/PA Unit  
Criminal Division  
Department of Justice  
Suite 1127, Keeney Building  
Washington, DC 20530-0001  
[crm.foia@usdoj.gov](mailto:crm.foia@usdoj.gov)

Kevin Krebs  
Assistant Director, FOIA/Privacy Staff  
Executive Office for United States  
Attorneys  
U.S. Department of Justice  
175 N Street NE  
Suite 5.400  
Washington, DC 20530-0001  
Via FOIAOnline

Patricia Matthews, FOIA Public Liaison  
National Security Division  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Room 6150  
Washington, D.C. 20530-0001  
[nsdfoia@usdoj.gov](mailto:nsdfoia@usdoj.gov)

**Re: Expedited Freedom of Information Act Request**

Dear FOIA Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, American Oversight makes the following request for records.

On May 9, 2019, President Trump's personal lawyer, Rudolph Giuliani, announced that he would travel to Ukraine to meet with the country's president-elect to urge the Ukrainian government to pursue an investigation related to the son of former Vice President Biden—a potential electoral opponent of the president.<sup>1</sup> Mr. Giuliani, reportedly aided by the president's former attorneys Victoria Toensing and Joseph E. diGenova, defended his planned trip by stating that "[w]e're not meddling in an election, we're meddling in an investigation."<sup>2</sup> After facing widespread criticism for this effort to influence a foreign government's law enforcement efforts for political gain, Mr. Giuliani canceled his trip to

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<sup>1</sup> Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries That Could Help Trump*, N.Y. TIMES, May 9, 2019, <https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html>.

<sup>2</sup> *Id.*



Ukraine.<sup>3</sup> Subsequent reports indicate that Mr. Giuliani engaged a State Department official—U.S. Special Representative for Ukraine Negotiations Kurt D. Volker—in his efforts.<sup>4</sup> The State Department has acknowledged that Mr. Volker helped arrange talks between Mr. Giuliani and a Ukrainian official.<sup>5</sup> Additionally, the U.S. Ambassador to the European Union, Gordon Sondland, has reportedly been included in calls with Giuliani regarding Ukraine.<sup>6</sup> Reports also indicate that Giuliani’s meeting with a Ukrainian official occurred shortly after the President Trump’s July 25, 2019, call with Ukraine’s president, in which President Trump reportedly asked Ukraine’s government to prioritize “corruption” investigations.<sup>7</sup>

Recent reports now indicate that the administration acted to withhold vital aid to Ukraine days before President Trump’s July phone call with Ukraine’s President Zelensky.<sup>8</sup> President Trump has also now acknowledged—following reports of a whistleblower complaint that the administration initially refused to provide to Congress—that he discussed his potential political opponent, Joe Biden, with Ukraine’s president in the July call.<sup>9</sup> A transcript or summary of the call released by the White House shows, further, that the president stated that he would direct Attorney General Barr to call the president of Ukraine with the president’s personal attorney, Mr. Giuliani, regarding his request that

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<sup>3</sup> Kenneth P. Vogel, *Rudy Giuliani Cancels His Trip to Ukraine, Blaming Democrats’ ‘Spin,’* N.Y. TIMES, May 11, 2019, <https://www.nytimes.com/2019/05/11/us/politics/rudy-giuliani-ukraine.html>.

<sup>4</sup> Kenneth P. Vogel & Andrew E. Kramer, *Giuliani Renews Push for Ukraine to Investigate Trump’s Political Opponents*, N.Y. TIMES, Aug. 21, 2019, <https://www.nytimes.com/2019/08/21/us/politics/giuliani-ukraine.html>.

<sup>5</sup> Kenneth P. Vogel (@kenvogel), TWITTER (Aug. 22, 2019, 6:30 PM), <https://twitter.com/kenvogel/status/1164666081501470727?s=20>.

<sup>6</sup> Erin Banco, et al., *U.S. Ambassador Roped Into Rudy’s Quest to Smear Biden*, THE DAILY BEAST (Sept. 25, 2019, 7:26 AM), <https://www.thedailybeast.com/impeachment-inquiry-us-ambassador-ropped-into-rudy-giulianis-quest-to-smear-biden>.

<sup>7</sup> Letter from Chairs Rep. Engel, Rep. Schiff, & Rep. Cummings, U.S. House of Representatives Committees on Foreign Affairs, Intelligence, and Oversight and Reform, to Michael Pompeo, Secretary, U.S. Dep’t of State, Sept. 9, 2019, <https://www.politico.com/f/?id=0000016d-16fe-d466-a36d-d6ff7a9c0000>.

<sup>8</sup> Karoun Demirjian et al., *Trump Ordered Hold on Military Aid Days Before Calling Ukraine President*, WASH. POST (Sept. 23, 2019, 10:40 PM), [https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/df93a6ca-de38-11e9-8dc8-498eabc129a0\\_story.html](https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/df93a6ca-de38-11e9-8dc8-498eabc129a0_story.html).

<sup>9</sup> Devan Cole, *Trump Says He Discussed Biden with Ukrainian President and Democrats Threaten ‘New Stage of Investigation,’* CNN (Sept. 22, 2019, 6:41 PM), <https://www.cnn.com/2019/09/22/politics/adam-schiff-donald-trump-ukraine-whistleblower-investigation-impeachment/index.html>.

Ukraine investigate his political opponent.<sup>10</sup> Additionally, press reporting suggests that other Department of Justice components were involved in the processing of the whistleblower's concerns, first conveyed via the Central Intelligence Agency's General Counsel to the National Security Division and Criminal Division, which reportedly declined to open an investigation into whether a campaign finance violation may have occurred.<sup>11</sup>

American Oversight seeks records with the potential to shed light on whether and to what extent the political interests of the president have influenced the administration's policies and actions in Ukraine, including actions related to the efforts of the president's personal attorney to persuade the Ukrainian government to conduct an investigation connected to a potential political opponent of the president.

### **Requested Records**

American Oversight seeks expedited review of this request for the reasons identified below and requests that the U.S. Department of Justice (DOJ) produce the following records as soon as practicable, and at least within twenty business days:

1. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) the DOJ officials specified below and (2) Rudolph Giuliani, Sam Kislin, Victoria Toensing, or Joseph diGenova.
2. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar

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<sup>10</sup> THE WHITE HOUSE, Memorandum of Telephone Conversation with President Zelenskyy of Ukraine, July 25, 2019, <https://www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf>.

<sup>11</sup> Julian Barnes et al., *White House Knew of Whistle-Blower's Allegations Soon After Trump's Call with Ukraine Leader*, N.Y. TIMES, Sept. 27, 2019, <https://www.nytimes.com/2019/09/26/us/politics/who-is-whistleblower.html>; Matt Zapotosky & Devlin Bartlett, *Justice Dept. Rejected Investigation of Trump Phone Call Just Weeks After It Began Examining the Matter*, WASH. POST (Sept. 25, 2019, 7:33 PM), [https://www.washingtonpost.com/national-security/justice-dept-rejected-investigation-of-trump-phone-call-just-weeks-after-it-began-examining-the-matter/2019/09/25/6f7977ce-dfb5-11e9-8dc8-498eabc129a0\\_story.html](https://www.washingtonpost.com/national-security/justice-dept-rejected-investigation-of-trump-phone-call-just-weeks-after-it-began-examining-the-matter/2019/09/25/6f7977ce-dfb5-11e9-8dc8-498eabc129a0_story.html).

invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) the DOJ officials specified below and (2) any representative of the government of Ukraine, including, but not limited to, Ukrainian President Zelensky.

3. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of the DOJ officials specified below, regarding (1) any plan by Rudolph Giuliani, Sam Kislin, Victoria Toensing, and/or Joseph diGenova to travel to Ukraine or to communicate with Ukrainian government officials or future Ukrainian government officials and/or (2) any other effort to encourage the Ukrainian government to investigate any matter related to former Vice President Joseph Biden or his son Hunter Biden, and/or (3) any issues regarding the August 12, 2019 Intelligence Community whistleblower complaint that involves to the president and the administration's actions with respect to Ukraine and/or the Biden family, including records regarding the initial processing of the whistleblower's concerns, which was reportedly first communicated via the General Counsel of the Central Intelligence Agency.<sup>12</sup>

Specified officials:

- i. Deputy Attorney General Jeffrey Rosen, and anyone serving as his Chief of Staff
- ii. Former Deputy Attorney General Rosenstein

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<sup>12</sup> This request references the whistleblower complaint discussed in the following: Letter from Michael K. Atkinson, Inspector General of the Intelligence Community, to Rep. Adam Schiff, Chair, and Rep. Devin Nunes, Ranking Member, of the U.S. House of Reps. Permanent Select Committee on Intelligence, Sept. 17, 2019, <https://www.lawfareblog.com/inspector-general-intelligence-community-letters-congressional-intelligence-committees>; Letter from Michael K. Atkinson, Inspector General of the Intelligence Community, to Rep. Adam Schiff, Chair, and Rep. Devin Nunes, Ranking Member, of the U.S. House of Reps. Permanent Select Committee on Intelligence, Sept. 9, 2019, <https://www.lawfareblog.com/inspector-general-intelligence-community-letters-congressional-intelligence-committees>; Julian Barnes, et al., *White House Knew of Whistle-Blower's Allegations Soon After Trump's Call With Ukraine Leader*, N.Y. TIMES, Sept. 27, 2019, <https://www.nytimes.com/2019/09/26/us/politics/who-is-whistleblower.html>.

- iii. Associate Deputy Attorney General Tashina Gauhar
- iv. Principal Associate Deputy Attorney General Ed O'Callaghan
- v. Assistant Attorney General Brian Benczkowski, and anyone serving as his Chief of Staff or Principal Deputy Assistant Attorney General
- vi. Assistant Attorney General John Demers, and anyone serving as his Chief of Staff or Principal Deputy Assistant Attorney General
- vii. U.S. Attorney for the District of Connecticut John Durham, and anyone serving as his Chief of Staff or first assistant

Please provide all responsive records from January 1, 2019, through the date the search is conducted.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government."<sup>13</sup> The subject matter of the requested records specifically relates to the operations or activities of the government, including communications surrounding an effort by the personal attorney to the president to persuade the Ukrainian government to investigate a family member of one of the president's potential political opponents,<sup>14</sup> and actions reportedly taken by the U.S. Government to aid those efforts. There is significant public interest in understanding whether and to what extent the perceived political interests of the president are influencing U.S. foreign policy toward Ukraine, including whether administration officials are involved in an effort to use the president's private attorney to lobby Ukrainian officials,<sup>15</sup> or whether other U.S. Government actions are being undertaken to pressure a foreign government to investigate the president's political opponent for President Trump's electoral advantage. The subject of this request is a matter of public interest, and the public's understanding of the government's activities and use of resources would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.<sup>16</sup> As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the

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<sup>13</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>14</sup> See Vogel *supra* note 1; Vogel *supra* note 3.

<sup>15</sup> See Vogel *supra* note 5.

<sup>16</sup> See 5 U.S.C. § 552(a)(4)(A)(iii).

release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>17</sup>

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.<sup>18</sup> Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;<sup>19</sup> posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;<sup>20</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>21</sup> posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;<sup>22</sup> posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make

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<sup>17</sup> American Oversight currently has approximately 12,300 page likes on Facebook and 54,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Sept. 20, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 20, 2019).

<sup>18</sup> News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

<sup>19</sup> DOJ Records Relating to Solicitor General Noel Francisco's Recusal, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; Francisco & the Travel Ban: What We Learned from the DOJ Documents, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>20</sup> See generally *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

<sup>21</sup> Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

<sup>22</sup> Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.



recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.<sup>23</sup>

Accordingly, American Oversight qualifies for a fee waiver.

### **Application for Expedited Processing**

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and the implementing regulations of your agency, American Oversight requests that your agency expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that there is a compelling need for expedited processing of the above request because the information requested is urgently needed in order to inform the public concerning actual or alleged government activity, and American Oversight is primarily engaged in disseminating the information it received from public records requests to the public.

Recent reporting demonstrates that there is clearly an urgent need to inform the public regarding the matters that are the subject of American Oversight's FOIA request. First, American Oversight has requested records with the potential to shed light on whether the current administration has, potentially at the behest of President Trump, undertaken inappropriate actions to pressure a foreign government to conduct an investigation of one of the president's potential political opponents in order to give the president an electoral advantage. Because voting in the presidential primary elections—in which both President Trump and candidate Joe Biden will be candidates—is scheduled to commence in less than five months, on February 3, 2020, and voting in the general election will start in just over a year, there is plainly an urgent need to inform the public about the administration actions that would be revealed by the records requested here.<sup>24</sup> Second, factual developments in the last two weeks have demonstrated that there are immense public concerns that the president, his administration, and his private attorney, Mr. Giuliani, may be continuing or intensifying their efforts to use the authority and resources of the federal government to pressure the Ukrainian government to undertake an investigation of presidential candidate Joe Biden and his family. There is also widespread public concern that a whistleblower complaint within the intelligence community relates to the president's efforts to pressure the Ukrainian government to conduct an investigation of a political opponent for the president's electoral benefit.<sup>25</sup> Mr. Giuliani, the president's

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<sup>23</sup> *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

<sup>24</sup> Catherine Kim, *The 2020 Election Calendar*, VOX (Sept. 12, 2019, 11:56 PM), <https://www.vox.com/2019/6/26/18693259/2020-presidential-election-calendar-primaries>.

<sup>25</sup> *See, e.g., John Wagner, Trump Declines to Say Whether He Discussed Joe Biden in Call with Ukrainian President*, WASH. POST (Sept. 20, 2019, 12:27 PM), <https://www.washingtonpost.com/politics/trump-issues-fresh-denial-of-a-dicey->

personal lawyer, has again confirmed that he has endeavored to pressure Ukrainian authorities to begin an investigation.<sup>26</sup>

American Oversight's request seeks information that can shed light on whether and to what extent the Trump administration is attempting to use government resources to pressure a foreign nation to undertake actions designed to threaten, weaken, or otherwise target the president's political opponent for the purpose of giving him an electoral advantage. The public urgently needs the information American Oversight has requested before voting in the 2020 presidential election, including before voting in the primaries of that election. The public has a right to know if the president's administration has inappropriately used government power to gain electoral advantage against an opponent through pressure on a foreign nation.

I further certify that American Oversight is primarily engaged in disseminating information to the public. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,<sup>27</sup> American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."<sup>28</sup> American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>29</sup> As discussed previously, American

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[conversation-with-a-foreign-leader/2019/09/20/00da79dc-dba3-11e9-a688-303693fb4b0b\\_story.html](https://www.nbcnews.com/politics/white-house/whistleblower-complaint-about-trump-involves-ukraine-report-says-n1056751); Phil Helsel, *Whistleblower Complaint About Trump Involves Ukraine, Report Says*, NBC NEWS (Sept. 19, 2019, 9:54 PM), <https://www.nbcnews.com/politics/white-house/whistleblower-complaint-about-trump-involves-ukraine-report-says-n1056751>.

<sup>26</sup> Robert Legare, *Rudy Giuliani Says He Didn't Ask Ukraine to Investigate Biden—And Then Says He Did*, CBS NEWS (Sept. 20, 2019, 10:31 AM) <https://www.cbsnews.com/news/rudy-giuliani-chris-cuomo-interview-did-not-ask-ukraine-to-investigate-biden-and-then-says-he-did-cnn-appearance/>.

<sup>27</sup> See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

<sup>28</sup> *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

<sup>29</sup> American Oversight currently has approximately 12,300 page likes on Facebook and 54,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight> (last visited Sept. 20, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 20, 2019).



Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.<sup>30</sup>

Accordingly, American Oversight's request satisfies the criteria for expedition.

### **Guidance Regarding the Search & Processing of Requested Records**

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks "communications," please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and

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<sup>30</sup> See generally *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>; see, e.g., *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>; *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>; *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>; *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>; *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

transcripts, notes, or minutes of any meetings, telephone conversations or discussions.

- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.<sup>31</sup> It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.<sup>32</sup>
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,<sup>33</sup> and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

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<sup>31</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

<sup>32</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

<sup>33</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

### Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Dan McGrath at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.897.4213. Also, if American Oversight's request for expedition is not granted or its request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers  
Executive Director  
American Oversight

# **EXHIBIT B**



October 4, 2019

**VIA EMAIL & ONLINE PORTAL**

Douglas Hibbard  
Chief, Initial Request Staff  
Office of Information Policy  
U.S. Department of Justice  
441 G St NW, 6th Floor  
Washington, DC 20530  
Via FOIAOnline

Amanda Marchand Jones, Chief  
FOIA/PA Unit  
Criminal Division  
Department of Justice  
Suite 1127, Keeney Building  
Washington, DC 20530-0001  
[crm.foia@usdoj.gov](mailto:crm.foia@usdoj.gov)

Kevin Krebs  
Assistant Director, FOIA/Privacy Staff  
Executive Office for United States  
Attorneys  
U.S. Department of Justice  
175 N Street NE  
Suite 5.400  
Washington, DC 20530-0001  
Via FOIAOnline

Patricia Matthews, FOIA Public Liaison  
National Security Division  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Room 6150  
Washington, D.C. 20530-0001  
[nsdfoia@usdoj.gov](mailto:nsdfoia@usdoj.gov)

**Re: Expedited Freedom of Information Act Request**

Dear FOIA Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, American Oversight makes the following request for records.

On May 9, 2019, President Trump's personal lawyer, Rudolph Giuliani, announced that he would travel to Ukraine to meet with the country's president-elect to urge the Ukrainian government to pursue an investigation related to the son of former Vice President Biden—a potential electoral opponent of the president.<sup>1</sup> Mr. Giuliani, reportedly aided by the president's former attorneys Victoria Toensing and Joseph E. diGenova, defended his planned trip by stating that "[w]e're not meddling in an election, we're meddling in an investigation."<sup>2</sup> After facing widespread criticism for this effort to influence a foreign government's law enforcement efforts for political gain, Mr. Giuliani canceled his trip to

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<sup>1</sup> Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries That Could Help Trump*, N.Y. TIMES, May 9, 2019, <https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html>.

<sup>2</sup> *Id.*



Ukraine.<sup>3</sup> Subsequent reports indicate that Mr. Giuliani engaged a State Department official—U.S. Special Representative for Ukraine Negotiations Kurt D. Volker—in his efforts.<sup>4</sup> The State Department has acknowledged that Mr. Volker helped arrange talks between Mr. Giuliani and a Ukrainian official.<sup>5</sup> Additionally, the U.S. Ambassador to the European Union, Gordon Sondland, has reportedly been included in calls with Giuliani regarding Ukraine.<sup>6</sup> Reports also indicate that Giuliani’s meeting with a Ukrainian official occurred shortly after the President Trump’s July 25, 2019, call with Ukraine’s president, in which President Trump reportedly asked Ukraine’s government to prioritize “corruption” investigations.<sup>7</sup>

Recent reports now indicate that the administration acted to withhold vital aid to Ukraine days before President Trump’s July phone call with Ukraine’s President Zelensky.<sup>8</sup> President Trump has also now acknowledged—following reports of a whistleblower complaint that the administration initially refused to provide to Congress—that he discussed his potential political opponent, Joe Biden, with Ukraine’s president in the July call.<sup>9</sup> A transcript or summary of the call released by the White House shows, further, that the president stated that he would direct Attorney General Barr to call the president of Ukraine with the president’s personal attorney, Mr. Giuliani, regarding his request that

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<sup>3</sup> Kenneth P. Vogel, *Rudy Giuliani Cancels His Trip to Ukraine, Blaming Democrats’ ‘Spin,’* N.Y. TIMES, May 11, 2019, <https://www.nytimes.com/2019/05/11/us/politics/rudy-giuliani-ukraine.html>.

<sup>4</sup> Kenneth P. Vogel & Andrew E. Kramer, *Giuliani Renews Push for Ukraine to Investigate Trump’s Political Opponents*, N.Y. TIMES, Aug. 21, 2019, <https://www.nytimes.com/2019/08/21/us/politics/giuliani-ukraine.html>.

<sup>5</sup> Kenneth P. Vogel (@kenvogel), TWITTER (Aug. 22, 2019, 6:30 PM), <https://twitter.com/kenvogel/status/1164666081501470727?s=20>.

<sup>6</sup> Erin Banco, et al., *U.S. Ambassador Roped Into Rudy’s Quest to Smear Biden*, THE DAILY BEAST (Sept. 25, 2019, 7:26 AM), <https://www.thedailybeast.com/impeachment-inquiry-us-ambassador-ropped-into-rudy-giulianis-quest-to-smear-biden>.

<sup>7</sup> Letter from Chairs Rep. Engel, Rep. Schiff, & Rep. Cummings, U.S. House of Representatives Committees on Foreign Affairs, Intelligence, and Oversight and Reform, to Michael Pompeo, Secretary, U.S. Dep’t of State, Sept. 9, 2019, <https://www.politico.com/f/?id=0000016d-16fe-d466-a36d-d6ff7a9c0000>.

<sup>8</sup> Karoun Demirjian et al., *Trump Ordered Hold on Military Aid Days Before Calling Ukraine President*, WASH. POST (Sept. 23, 2019, 10:40 PM), [https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/df93a6ca-de38-11e9-8dc8-498eabc129a0\\_story.html](https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/df93a6ca-de38-11e9-8dc8-498eabc129a0_story.html).

<sup>9</sup> Devan Cole, *Trump Says He Discussed Biden with Ukrainian President and Democrats Threaten ‘New Stage of Investigation,’* CNN (Sept. 22, 2019, 6:41 PM), <https://www.cnn.com/2019/09/22/politics/adam-schiff-donald-trump-ukraine-whistleblower-investigation-impeachment/index.html>.

Ukraine investigate his political opponent.<sup>10</sup> Additionally, press reporting suggests that other Department of Justice components were involved in the processing of the whistleblower's concerns, first conveyed via the Central Intelligence Agency's General Counsel to the National Security Division and Criminal Division, which reportedly declined to open an investigation into whether a campaign finance violation may have occurred.<sup>11</sup>

American Oversight seeks records with the potential to shed light on whether and to what extent the political interests of the president have influenced the administration's policies and actions in Ukraine, including actions related to the efforts of the president's personal attorney to persuade the Ukrainian government to conduct an investigation connected to a potential political opponent of the president.

### **Requested Records**

American Oversight seeks expedited review of this request for the reasons identified below and requests that the U.S. Department of Justice (DOJ) produce the following records as soon as practicable, and at least within twenty business days:

All email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) sent by specified DOJ officials containing any of the following key terms:<sup>12</sup>

i. Rudy

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<sup>10</sup> THE WHITE HOUSE, Memorandum of Telephone Conversation with President Zelenskyy of Ukraine, July 25, 2019, <https://www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf>.

<sup>11</sup> Julian Barnes et al., *White House Knew of Whistle-Blower's Allegations Soon After Trump's Call with Ukraine Leader*, N.Y. TIMES, Sept. 27, 2019, <https://www.nytimes.com/2019/09/26/us/politics/who-is-whistleblower.html>; Matt Zapotosky & Devlin Bartlett, *Justice Dept. Rejected Investigation of Trump Phone Call Just Weeks After It Began Examining the Matter*, WASH. POST (Sept. 25, 2019, 7:33 PM), [https://www.washingtonpost.com/national-security/justice-dept-rejected-investigation-of-trump-phone-call-just-weeks-after-it-began-examining-the-matter/2019/09/25/6f7977ce-dfb5-11e9-8dc8-498eabc129a0\\_story.html](https://www.washingtonpost.com/national-security/justice-dept-rejected-investigation-of-trump-phone-call-just-weeks-after-it-began-examining-the-matter/2019/09/25/6f7977ce-dfb5-11e9-8dc8-498eabc129a0_story.html).

<sup>12</sup> To be clear, American Oversight requests all emails sent by the specified officials containing the key terms listed here without subject matter limitation. American Oversight has provided significant contextual background information concerning the reasons for its request, and the key terms listed are those likely to be used in communications concerning vitally important matters related to the matters discussed in this letter, but the contextual information American Oversight provided should not be used to exclude, or treat as non-responsive, any email communications sent by these officials containing these key terms.

- ii. Rudolph
- iii. Giuliani
- iv. Giuliani
- v. Giuliani
- vi. Giuliani
- vii. Toensing
- viii. diGenova
- ix. Kislin
- x. Hunter
- xi. Biden
- xii. Parnas
- xiii. Fruman
- xiv. Kolomoisky
- xv. Klitschko
- xvi. Burisma
- xvii. Shokin
- xviii. Lutsenko
- xix. Zelensky
- xx. Zelenskyy
- xxi. Zelenskiy
- xxii. Yermak
- xxiii. Bakanov
- xxiv. "Ukraine Security Assistance Initiative"
- xxv. USAI

Specified officials:

- i. Principal Associate Deputy Attorney General Ed O'Callaghan
- ii. Associate Deputy Attorney General Tashina Gauhar
- iii. Assistant Attorney General Brian Benczkowski, and anyone serving as his Chief of Staff or Principal Deputy Assistant Attorney General
- iv. Assistant Attorney General John Demers, and anyone serving as his Chief of Staff or Principal Deputy Assistant Attorney General
- v. U.S. Attorney for the District of Connecticut John Durham, and anyone serving as his Chief of Staff or first assistant

American Oversight has limited its request to sent messages of each official to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if the specified officials sent a response to an incoming message containing a key term listed above, the email chain containing the initially received message and the response is responsive to this request.

Please provide all responsive records from January 1, 2019, through the date the search is conducted.



### Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government."<sup>13</sup> The subject matter of the requested records specifically relates to the operations or activities of the government, including communications surrounding an effort by the personal attorney to the president to persuade the Ukrainian government to investigate a family member of one of the president's potential political opponents,<sup>14</sup> and actions reportedly taken by the U.S. Government to aid those efforts. There is significant public interest in understanding whether and to what extent the perceived political interests of the president are influencing U.S. foreign policy toward Ukraine, including whether administration officials are involved in an effort to use the president's private attorney to lobby Ukrainian officials,<sup>15</sup> or whether other U.S. Government actions are being undertaken to pressure a foreign government to investigate the president's political opponent for President Trump's electoral advantage. The subject of this request is a matter of public interest, and the public's understanding of the government's activities and use of resources would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.<sup>16</sup> As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>17</sup>

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<sup>13</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>14</sup> See Vogel *supra* note 1; Vogel *supra* note 3.

<sup>15</sup> See Vogel *supra* note 5.

<sup>16</sup> See 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>17</sup> American Oversight currently has approximately 12,300 page likes on Facebook and 54,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Sept. 20, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 20, 2019).

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.<sup>18</sup> Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;<sup>19</sup> posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;<sup>20</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>21</sup> posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;<sup>22</sup> posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.<sup>23</sup>

Accordingly, American Oversight qualifies for a fee waiver.

### **Application for Expedited Processing**

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and the implementing regulations of your agency, American Oversight requests that your agency expedite the processing of this request.

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<sup>18</sup> *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

<sup>19</sup> *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>20</sup> *See generally Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; *see, e.g., Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

<sup>21</sup> *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

<sup>22</sup> *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

<sup>23</sup> *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

I certify to be true and correct to the best of my knowledge and belief that there is a compelling need for expedited processing of the above request because the information requested is urgently needed in order to inform the public concerning actual or alleged government activity, and American Oversight is primarily engaged in disseminating the information it received from public records requests to the public.

Recent reporting demonstrates that there is clearly an urgent need to inform the public regarding the matters that are the subject of American Oversight's FOIA request. First, American Oversight has requested records with the potential to shed light on whether the current administration has, potentially at the behest of President Trump, undertaken inappropriate actions to pressure a foreign government to conduct an investigation of one of the president's potential political opponents in order to give the president an electoral advantage. Because voting in the presidential primary elections—in which both President Trump and candidate Joe Biden will be candidates—is scheduled to commence in less than five months, on February 3, 2020, and voting in the general election will start in just over a year, there is plainly an urgent need to inform the public about the administration actions that would be revealed by the records requested here.<sup>24</sup> Second, factual developments in the last two weeks have demonstrated that there are immense public concerns that the president, his administration, and his private attorney, Mr. Giuliani, may be continuing or intensifying their efforts to use the authority and resources of the federal government to pressure the Ukrainian government to undertake an investigation of presidential candidate Joe Biden and his family. There is also widespread public concern that a whistleblower complaint within the intelligence community relates to the president's efforts to pressure the Ukrainian government to conduct an investigation of a political opponent for the president's electoral benefit.<sup>25</sup> Mr. Giuliani, the president's personal lawyer, has again confirmed that he has endeavored to pressure Ukrainian authorities to begin an investigation.<sup>26</sup>

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<sup>24</sup> Catherine Kim, *The 2020 Election Calendar*, VOX (Sept. 12, 2019, 11:56 PM), <https://www.vox.com/2019/6/26/18693259/2020-presidential-election-calendar-primaries>.

<sup>25</sup> See, e.g., John Wagner, *Trump Declines to Say Whether He Discussed Joe Biden in Call with Ukrainian President*, WASH. POST (Sept. 20, 2019, 12:27 PM), [https://www.washingtonpost.com/politics/trump-issues-fresh-denial-of-a-dicey-conversation-with-a-foreign-leader/2019/09/20/00da79dc-dba3-11e9-a688-303693fb4b0b\\_story.html](https://www.washingtonpost.com/politics/trump-issues-fresh-denial-of-a-dicey-conversation-with-a-foreign-leader/2019/09/20/00da79dc-dba3-11e9-a688-303693fb4b0b_story.html); Phil Helsel, *Whistleblower Complaint About Trump Involves Ukraine, Report Says*, NBC NEWS (Sept. 19, 2019, 9:54 PM), <https://www.nbcnews.com/politics/white-house/whistleblower-complaint-about-trump-involves-ukraine-report-says-n1056751>.

<sup>26</sup> Robert Legare, *Rudy Giuliani Says He Didn't Ask Ukraine to Investigate Biden—And Then Says He Did*, CBS NEWS (Sept. 20, 2019, 10:31 AM) <https://www.cbsnews.com/news/rudy-giuliani-chris-cuomo-interview-did-not-ask-ukraine-to-investigate-biden-and-then-says-he-did-cnn-appearance/>.

American Oversight's request seeks information that can shed light on whether and to what extent the Trump administration is attempting to use government resources to pressure a foreign nation to undertake actions designed to threaten, weaken, or otherwise target the president's political opponent for the purpose of giving him an electoral advantage. The public urgently needs the information American Oversight has requested before voting in the 2020 presidential election, including before voting in the primaries of that election. The public has a right to know if the president's administration has inappropriately used government power to gain electoral advantage against an opponent through pressure on a foreign nation.

I further certify that American Oversight is primarily engaged in disseminating information to the public. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,<sup>27</sup> American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."<sup>28</sup> American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>29</sup> As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.<sup>30</sup>

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<sup>27</sup> See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

<sup>28</sup> *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

<sup>29</sup> American Oversight currently has approximately 12,300 page likes on Facebook and 54,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight> (last visited Sept. 20, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 20, 2019).

<sup>30</sup> See generally *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>; see, e.g., *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>; *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>; *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>; *Investigating the Trump Administration's Efforts to*

Accordingly, American Oversight's request satisfies the criteria for expedition.

**Guidance Regarding the Search & Processing of Requested Records**

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks "communications," please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal

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*Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT,  
<https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>; *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT,  
<https://www.americanoversight.org/sessions-letter>.



Records Act and FOIA.<sup>31</sup> It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.<sup>32</sup>

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,<sup>33</sup> and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

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<sup>31</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

<sup>32</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

<sup>33</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

## Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Dan McGrath at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.897.4213. Also, if American Oversight's request for expedition is not granted or its request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal line extending to the left.

Austin R. Evers  
Executive Director  
American Oversight

**ATTACHMENT E****CIVIL COVER SHEET**

JS-44 (Rev. 3/16 DC)

<b>I. (a) PLAINTIFFS</b> American Oversight  (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>11001</u> (EXCEPT IN U.S. PLAINTIFF CASES)  (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Daniel A. McGrath American Oversight, 1030 15th Street NW, B255 Washington, DC 20005 202.897.4213		<b>DEFENDANTS</b> U.S. Department of Justice  COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>  ATTORNEYS (IF KNOWN)																									
<b>II. BASIS OF JURISDICTION</b> (PLACE AN X IN ONE BOX ONLY)  <input type="radio"/> 1 U.S. Government Plaintiff <input type="radio"/> 3 Federal Question (U.S. Government Not a Party)  <input checked="" type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b> <table style="width: 100%; border: none;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>			PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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<input checked="" type="radio"/> <b>A. Antitrust</b>  <input type="checkbox"/> 410 Antitrust	<input type="radio"/> <b>B. Personal Injury/Malpractice</b>  <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> <b>C. Administrative Agency Review</b>  <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b>  Any nature of suit from any category may be selected for this category of case assignment.  *(If Antitrust, then A governs)*																								
<input type="radio"/> <b>E. General Civil (Other)</b> OR <input type="radio"/> <b>F. Pro Se General Civil</b>																											
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property  <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement  <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)																								



<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input checked="" type="radio"/> <b>I. FOIA/Privacy Act</b>  <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
☒ 1 Original Proceeding  
 ☐ 2 Removed from State Court  
 ☐ 3 Remanded from Appellate Court  
 ☐ 4 Reinstated or Reopened  
 ☐ 5 Transferred from another district (specify)  
 ☐ 6 Multi-district Litigation  
 ☐ 7 Appeal to District Judge from Mag. Judge

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 5 U.S.C. 552. Defendant has failed to provide responsive records to FOIA request.

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	<b>DEMAND \$</b>	<b>JURY DEMAND:</b> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
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**VIII. RELATED CASE(S) IF ANY** (See instruction) YES ☐ NO ☒ If yes, please complete related case form

DATE: 11/23/2019

SIGNATURE OF ATTORNEY OF RECORD

**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

American Oversight

*Plaintiff*

v.

U.S. Department of Justice

*Defendant*

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Civil Action No.

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

Jessie K. Liu  
c/o civil process clerk  
U.S. Attorney for the District of Columbia  
555 4th Street NW  
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel A. McGrath  
American Oversight  
1030 15th Street NW, B255  
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

American Oversight

\_\_\_\_\_  
*Plaintiff*

v.

U.S. Department of Justice

\_\_\_\_\_  
*Defendant*

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Civil Action No.

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel A. McGrath  
American Oversight  
1030 15th Street NW, B255  
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

American Oversight

*Plaintiff*

v.

U.S. Department of Justice

*Defendant*

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Civil Action No.

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel A. McGrath  
American Oversight  
1030 15th Street NW, B255  
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: